

1 James Alan Bush  
1745 De Marietta Avenue #3  
2 San Jose, CA 95126  
3 408-982-3272

4 Plaintiff in pro se

ADR

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NP  
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Filed

MAR - 4 2008

RICHARD W. WIEKING  
CLERK, U.S. DISTRICT COURT  
NORTHERN DISTRICT OF CALIFORNIA  
SAN JOSE

8 UNITED STATES DISTRICT COURT  
9 NORTHERN DISTRICT OF CALIFORNIA  
10 SAN JOSE DIVISION  
11

c/pvt

12 James Alan Bush,

13 Plaintiff

14 v.

15 Cloudmark, Kim Moss, Tom Doe 1,  
16 Mike Smith, Jamie de Guerre,  
and Does 2 to 5, inclusive,

17 Defendants.

CAS NO  
C08 01272  
COMPLAINT

PVT

HARASSMENT, AND CONSTRUCTIVE  
DISCHARGE RESULTING FROM  
HARASSMENT (FEHA), CONSPIRACY  
TO DEPRIVE PLAINTIFF OF CIVIL  
RIGHTS, NEGLECT TO PREVENT  
CONSPIRACY TO DEPRIVE PLAINTIFF  
OF CIVIL RIGHTS

Judge Jeremy Fogel

21 PRELIMINARY STATEMENT

22 Plaintiff brings this Federal and California equal employment  
23 opportunity suit pursuant to Title 42 U.S.C. § 12112 (Americans with  
24 Disabilities Act of 1990) and Gov. Code §§ 12926, 12940(a) (California  
25 Fair Employment and Housing Act), which prohibit employment  
26 discrimination based on the following protected characteristics:

- 1 • Physical and mental disability [see Gov. Code § 12940(a)-(d),
- 2 (j); Green v. State (2007) 42 Cal. 4<sup>th</sup> 254, 260-264, 64 Cal. Rptr.
- 3 3d 390, 165 P.3d 118); 42 U.S.C. § 12101 et seq.; 42 U.S.C. §
- 4 12112(a), (b)(5); see 42 U.S.C. § 12111(8)]; and,
- 5 • Sexual orientation [Gov. Code § 12926(m), (q)].

#### 7 **RELEVANT STATUTORY SCHEME**

8 Under FEHA, "physical disability" includes, but is not limited to,

9 being regarded or treated as having, or having had, a disease,

10 disorder, condition, cosmetic disfigurement, anatomical loss, or

11 health impairment that has no present disabling effect but may become

12 a physical disability, such as a physiological disease, disorder,

13 condition, cosmetic disfigurement, or anatomical loss [Gov. Code §

14 12926(k)] that does both of the following: (1) affects one or more of

15 the following body systems: neurological, immunological,

16 musculoskeletal, special sense organs, respiratory including speech

17 organs, cardiovascular, reproductive, digestive, genitourinary, hemic

18 and lymphatic, skin, and endocrine; and (2) limits a major life

19 activity [see Gelfo v. Lockheed Martin Corp. (2006) 140 Cal. App. 4<sup>th</sup>

20 34, 52-53, 43 Cal. Rptr. 3d 874 (employer's belief need not be

21 mistaken for employee to qualify as disabled under "regarded or

22 treated as" prong of definition of disability)].

23 Under FEHA, "mental disability" includes, but is not limited to, the

24 following [Gov. Code § 12926(i)]:

- 25 • Having any mental or psychological disorder or condition,
- 26 such as mental retardation, organic brain syndrome,

1 emotional or mental illness, or specific learning  
2 disabilities, that limits a major life activity;

- 3 • Having a record or history of a mental or psychological  
4 disorder or condition described above, which is known to  
5 the employer; and,
- 6 • Being regarded or treated by the employer as having or  
7 having had, a mental or psychological disorder or condition  
8 that has no present disabling effect, but that may become a  
9 mental disability described in the first bulleted item,  
10 above, [see *Gelfo v. Lockheed Martin Corp.* (2006) 140 Cal.  
11 App. 4<sup>th</sup> 34, 52-53, 43 Cal. Rptr. 3d 874 (employer's belief  
12 need not be mistaken for employee to qualify as disabled  
13 under "regarded or treated as" prong of definition of  
14 disability)].

15 FEHA provides that all of the following are unlawful employment  
16 practices:

- 17 • For an employer to bar or discharge any person from employment,  
18 or from a training program leading to employment, because of  
19 race, religious creed, color, national origin, ancestry, physical  
20 disability, mental disability, medical condition, marital status,  
21 sex, age, or sexual orientation [Gov. Code § 12970(a)];
- 22 • For an employer to discriminate against any person in  
23 compensation or in terms, conditions, or privileges or  
24 employment, because of race, religious creed, color, national  
25 origin, ancestry, physical disability, mental disability, medical  
26 condition, marital status, sex, age, or sexual orientation [Gov.

1 Code § 12940(a)];

- 2 • For an employer to print or circulate, or cause to be printed or  
3 circulated, any publication, or to make any non-job-related  
4 inquiry of an employee, either verbal or through use of an  
5 application form, that expresses, directly or indirectly, any  
6 limitation, specification, or discrimination as to race,  
7 religious creed, color, national origin, ancestry, physical  
8 disability, mental disability, medical condition, marital status,  
9 sex, age, or sexual orientation, or any intent to make any such  
10 limitation, specification, or discrimination [Gov. Code §  
11 12940(d)];
- 12 • For a person to aid, abet, incite, compel, or coerce the doing of  
13 any of the acts forbidden under FEHA, or to attempt to do so  
14 [Gov. Code § 12940(i)];
- 15 • For an employer or any other person to harass an employee or a  
16 person providing services pursuant to a contract because of race,  
17 religious creed, color, national origin, ancestry, physical  
18 disability, mental disability, medical condition, marital status,  
19 sex, sexual orientation, or age [Gov. Code § 12970(j)];
- 20 • For an employer to fail to take all reasonable steps necessary to  
21 prevent discrimination and harassment from occurring [Gov. Code §  
22 12940(k)];
- 23 • For an employer covered by FEHA to fail to make reasonable  
24 accommodation for the known physical or mental disability of an  
25 employee [Gov. Code § 1290(m)];

26 Under federal law:

- 1 • The Americans With Disabilities Act (ADA) provides that no  
2 employer may discriminate against a qualified individual with a  
3 disability in the discharge of employees, or other terms,  
4 conditions, and privileges of employment, because of the  
5 individual's disability [Title 42 U.S.C. § 12112(a)]; whereas,  
6 "disability" means the following [Title 42 U.S.C. § 12102]:
  - 7     ▪ A physical or mental impairment that substantially limits  
8         one or more of the major life activities of an  
9         individual;
  - 10    ▪ A record of such an impairment; and,
  - 11    ▪ Being regarded as having such an impairment.
- 12 • The ADA prohibits employers from discriminating on the basis of a  
13 disability against a qualified individual in regard to such  
14 factors as layoff, job assignment, and fringe benefits [29 C.F.R.  
15 § 1630.4];
- 16 • It is unlawful to discriminate with respect to fringe benefits,  
17 [Gov. Code § 12940(a) (FEHA); 2 Cal. Code Reg. §§ 7294.2(a)  
18 (conditioning employment decisions regarding disabled employee on  
19 waiver of any fringe benefit prohibited)];
- 20 • The Equal Employment Opportunity Commission (EEOC) guidelines  
21 define "fringe benefits" as medical, hospital, accident, and life  
22 insurance; retirement benefits; profit sharing and bonus plans;  
23 leaves of absence; and similar benefits [see 29 C.F.R. §  
24 1604.9(a)], and are likewise "terms, conditions, or privileges or  
25 employment" [see 2 Cal. Code Reg. § 7287.6 (FEHC regulation)];
- 26 • The Civil Rights Act (CRA) of 1991 clarifies that Title 42 U.S.C.

1 § 1981 applies to all phases and incidents of a contractual  
 2 employment relationship, and applies to conduct, such as  
 3 harassment; moreover, claims brought under the CRA are subject to  
 4 the four-year federal "catchall" statute of limitations [Jones v.  
 5 R.R. Donnelley & Sons Co. (2004) 541 U.S. 369, 124 S. Ct. 1836,  
 6 1841-1846, 158 L. Ed. 2d 645, 652-658 (hostile work environment,  
 7 wrongful termination, and failure-to-transfer claims)].

- 8 • FEHA and the ADA both prohibit discharges and layoffs based on  
 9 membership in a protected classification [see 42 U.S.C. §  
 10 12112(a) (ADA); Gov. Code § 12940(a) (FEHA); see also 29 C.F.R. §  
 11 1630.4(b) (EEOC regulations under ADA)];
- 12 • Under California law, a constructive discharge can occur without  
 13 discrimination [see Turner v. Anheuser-Busch, Inc. (1994) 7 Cal.  
 14 4<sup>th</sup> 1238, 32 Cal. Rptr. 2d 223, 876 P.2d 1022];

#### 16 VENUE

17 Venue is appropriate in this court because both of the defendants  
 18 reside in this district, and a substantial amount of the acts and  
 19 omissions giving rise to this lawsuit occurred in this district.  
 20

#### 21 JURISDICTION

22 The Court has jurisdiction of this action under Title 28 U.S.C. §§  
 23 1331, 1343, 1344, which authorizes original jurisdiction on the  
 24 district court of all civil rights cases arising under the  
 25 Constitution, laws or treaties of the United States. Plaintiff further

invokes the supplemental jurisdiction of this Court to hear and decide claims arising under California state law.

#### PARTIES

- Plaintiff, James Alan Bush, during his employment, and at all times herein, is and was covered by FEHA as:

- a California employee within the definition of Gov. Code § 12970(a); 2 Cal. Code Reg. §§ 7286.5(b); and,
- an independent contractor within the definition of 2 Cal. Code Reg. § 7286.5(b)(1) and Lab. Code § 3353].

Accordingly, Plaintiff is afforded protection against harassment pursuant to Gov. Code § 12970(j)(4), (5).

- Defendant, Cloudmark, is and was covered by FEHA as a private employer under:

- California law, within the definition of Gov. Code § 12925(d); and,
- Federal law, within the meaning of Title 42 U.S.C. § 1981(c); Patterson v. McLean Credit Union (1989) 491 U.S. 164, 175, 109 S. Ct. 2363, 105 L. Ed. 2d 132; Runyon v. McCrary (1976) 427 U.S. 160, 172, 96 S. Ct. 2586, 49 L. Ed. 2d 415; Johnson v. Railway Express Agency (1975) 421 U.S. 454, 459-460, 95 S. Ct. 1716, 44 L. Ed. 2d 295].

Accordingly, Defendant, Cloudmark, is subject to the provisions of FEHA pursuant to Gov. Code § 12926(d), 12940(a)-(f), (j), (m), (n)].

- Defendants, Mike Smith, Kim Moss, Jamie de Guerre, and Tom Doe 1,

were Plaintiff's supervisors within the definition of Gov. Code § 12926(r), and are subject to personal liability for violations of FEHA constituting harassment pursuant to Gov. Code § 12940(j)(3); see § 115.36[2][d]; Matthews v. Superior Court (1995) 34 Cal. App. 4<sup>th</sup> 598, 599-600, 605-606, 40 Cal. Rptr. 2d 350 (decided before enactment of Gov. Code § 12940(j)(3); supervisor who has aided or abetted harassment may be held personally liable); Page v. Superior Court (1995) 31 Cal. App. 4<sup>th</sup> 1206, 1213, 37 Cal. Rptr. 2d 529 (same)].

- All other Defendants named herein are being sued pursuant to Title 42 U.S.C. § 1983 as private individuals.

#### **CLAIM FOR RELIEF**

Plaintiff complains and for causes of action alleges as follows:

#### **FIRST CAUSE OF ACTION**

(For Violations of ADA and FEHA Against Cloudmark)

1. Plaintiff, James Alan Bush, has the following physical disability and mental disability: HIV/AIDS [see Gov. Code § 12926.1(c)]; and, the plaintiff was perceived as a person who has this physical disability [Gov. Code § 12926.1(c)]; the plaintiff also has the following mental disability: clinical depression [see Gov. Code § 12926.1(c)].
2. Defendant, Cloudmark, was aware of Plaintiff's medical condition set forth in Paragraph 1, above, because Plaintiff informed defendant of this medical condition in a letter written by



1 Plaintiff's primary physician, Paul Ford, M.D. (Internal  
2 Medicine), on October 7<sup>th</sup>, 2004, pursuant to Spitzer v. Good Guys  
3 (2000) 80 Cal. App. 4<sup>th</sup> 1376, 1384-1385, 96 Cal. Rptr. 2d 236];  
4 and, Defendant, Cloudmark, was aware of Plaintiff's mental  
5 disability set forth in Paragraph 1, above, because Plaintiff  
6 informed defendant of this mental disability verbally.

7 3. Defendant, Cloudmark, its agents and supervisors, Mike Smith,  
8 Jamie de Guerre, Chris Cho, Kim Moss, Tom Doe 1, and Helga  
9 Veidemann, engaged in the following actions with the intent of  
10 harassing Plaintiff on account of his medical condition, which is  
11 prohibited by Title 42 U.S.C. § 12112, and, presumably, his  
12 sexual orientation, by fabricating an event by which the  
13 defendants could accuse the plaintiff of an act that violated  
14 company policy.

15 4. Defendants Smith and Moss and Defendant Cloudmark's employees,  
16 Chris Cho and Helga Veidemann, engaged in the following action  
17 with the intent of harassing Plaintiff on account of his sexual  
18 orientation by:

- 19 • discussing his HIV status amongst themselves and other  
20 employees.

21 5. Defendant's supervisor and agent, Mike Smith, Jamie de Guerre,  
22 Kim Moss, and Tom Doe 1, knew or should have known of these  
23 harassing actions because the plaintiff and other employees  
24 informed them of these actions and because one or more of the  
25 aforementioned defendants disclosed Plaintiff's disabilities to  
26 others. Despite Defendants' actual and constructive knowledge of

1 the above-described harassment, Defendants failed to take  
2 immediate and appropriate corrective action to stop the  
3 harassment. Furthermore, before the harassment alleged in  
4 Paragraph 3, above, occurred, Defendants failed to take all  
5 reasonable steps to prevent such harassment from occurring, as  
6 required by Gov. Code § 12940(j), (k).

7 6. The actions alleged in Paragraphs 2 through 4, above, caused  
8 Plaintiff to be constructively discharged from his employment, in  
9 that any reasonable person in Plaintiff's position subject to  
10 those actions would have resigned or quit his/her employment, as  
11 Plaintiff was compelled by those actions to do [DFEH v. Rosenberg  
12 (1990) FEHC Dec. No. 90-09, p. 9; DFEH v. Livermore Joe's, Inc.  
13 (1990) FEHC Dec. No. 90-07, p. 17; DFEH v. County of Madera  
14 (1990) FEHC Dec. No. 90-03, p. 31]. Defendant had actual  
15 knowledge of intolerable conditions caused by the acts of  
16 harassment alleged above, but failed to take any steps to end  
17 those conditions (for the purpose of causing Plaintiff's  
18 resignation). Furthermore, defendant knew or should have known  
19 that Plaintiff's resignation would result from its actions.

20 7. The circumstances of Plaintiff's discharge gives rise to an  
21 inference of discrimination [Kelly v. Stamps.com, Inc. (2005) 135  
22 Cal. App. 4<sup>th</sup> 1088, 1098-1099, 38 Cal. Rptr. 3d 240] because  
23 Cloudmark's proffered explanation was not believable [Texas Dep't  
24 of Community Affairs v. Burdine (1981) 450 U.S. 248, 256, 101 S.  
25 Ct. 1089, 67 L. Ed. 2d 207 (Title VII); Merrick v. Farmers Ins.  
26 Group (9<sup>th</sup> Cir. 1900) 892 F.2d 1434, 1437 (ADEA); Mixon v. Fair

1 Employment & Housing Com. (1987) 192 Cal. App. 3d 1306, 1318-  
2 1319, 237 Cal. Rptr. 884 (FEHA)]; and, that Defendant Cloudmark's  
3 "legitimate" reasons were a pretext for discrimination [Texas  
4 Dep't of Community Affairs v. Burdine (1981) 450 U.S. 248, 253,  
5 256, 101 S. Ct. 1089, 67 L. Ed. 2d 207 (Title VII); McDonnell  
6 Douglas Corp. v. Green (1973) 411 U.S. 792, 804, 93 S. Ct. 1817,  
7 36 L. Ed. 2d 668 (Title VII); see also Rodriguez v. General  
8 Motors Corp. (9<sup>th</sup> Cir. 1990) 904 F.2d 531, 533 (42 U.S.C. §  
9 1981)].

10  
11 **SECOND, THIRD, AND FOURTH CAUSES OF ACTIONS**

12 (For Violations of Title 42 U.S.C. §§ 1985, 1986)

13 [RESERVED]

14  
15 **JOINT AND SEVERAL LIABILITY**

16 As set forth herein, all Defendants are joint tortfeasors engaged in  
17 a common plan and scheme, and, thus, all are jointly and severally  
18 liable for all damages suffered by Plaintiff herein.

19  
20 **JURY TRIAL DEMAND**

21 Plaintiff is entitled to and demands a trial by jury on all issues.

22  
23 **PRAYER FOR RELIEF**

24 WHEREFORE, Plaintiff prays for judgment against Defendants, as  
25 follows:

26 a. For a declaratory judgment determining that the actions of the

1 Defendants constituted violations of the laws forming the basis  
2 of this complaint.

3 b. For compensatory damages to each of the Plaintiff, according to  
4 proof to be established at trial;

5 c. For punitive and exemplary damages according to proof to be  
6 established at trial, pursuant to the standard set forth under  
7 Civ. Code § 3294(b) (FEHA);

8 d. For reasonable attorney's fees and costs associated with the  
9 litigation, according to proof, which are recoverable in civil  
10 rights actions under Title 42 U.S.C. § 1988(b); and,

11 e. For such other and further relief as the Court may deem just and  
12 proper.

13  
14 **VERIFICATION**

15 I, James Alan Bush, Plaintiff in the above-entitled action, have  
16 read the foregoing and know the contents thereof. The same is true of  
17 my own knowledge, except as to those matters that are therein alleged  
18 on information and belief; and, as to those matters, I believe it to  
19 be true.

20 I declare under penalty of perjury that the foregoing is true and  
21 correct and that this declaration was executed at San Jose,  
22 California.

23  
24 DATED: March 31,  
25 2008

SIGNED: [Signature]

## CIVIL COVER SHEET

The JS 44 civil cover sheet and the information contained herein neither replace nor supplement the filing and service of pleadings or other papers as required by law, except as provided by local rules of court. This form, approved by the Judicial Conference of the United States in September 1974, is required for the use of the Clerk of Court for the purpose of initiating the civil docket sheet. (SEE INSTRUCTIONS ON PAGE TWO OF THE FORM.)

## I. (a) PLAINTIFFS

James Alan Bush

## DEFENDANTS

Cloudmark

(b) County of Residence of First Listed Plaintiff **San Francisco**  
(EXCEPT IN U.S. PLAINTIFF CASES)

County of Residence of First Listed Defendant **San Francisco**  
(IN U.S. PLAINTIFF CASES ONLY)

NOTE: IN LAND CONDEMNATION CASES, USE THE LOCATION OF THE LAND INVOLVED.

(c) Attorney's (Firm Name, Address, and Telephone Number)

Attorneys (If Known)

In pro se

**008 01272 PVT**

## II. BASIS OF JURISDICTION (Place an "X" in One Box Only)

- ☐ 1 U.S. Government Plaintiff ☒ 3 Federal Question (U.S. Government Not a Party)
- ☐ 2 U.S. Government Defendant ☐ 4 Diversity (Indicate Citizenship of Parties in Item III)

## III. CITIZENSHIP OF PRINCIPAL PARTIES (Place an "X" in One Box for Plaintiff and One Box for Defendant)

- |   | PTF                        | DEF                        |   | PTF                        | DEF                        |
|---|----------------------------|----------------------------|---|----------------------------|----------------------------|
| Citizen of This State                   | <input type="checkbox"/> 1 | <input type="checkbox"/> 1 | Incorporated or Principal Place of Business In This State     | <input type="checkbox"/> 4 | <input type="checkbox"/> 4 |
| Citizen of Another State                | <input type="checkbox"/> 2 | <input type="checkbox"/> 2 | Incorporated and Principal Place of Business In Another State | <input type="checkbox"/> 5 | <input type="checkbox"/> 5 |
| Citizen or Subject of a Foreign Country | <input type="checkbox"/> 3 | <input type="checkbox"/> 3 | Foreign Nation  | <input type="checkbox"/> 6 | <input type="checkbox"/> 6 |

## IV. NATURE OF SUIT (Place an "X" in One Box Only)

CONTRACT	TORTS		FORFEITURE/PENALTY	BANKRUPTCY	OTHER STATUTES
<input type="checkbox"/> 110 Insurance	<b>PERSONAL INJURY</b>	<b>PERSONAL INJURY</b>	<input type="checkbox"/> 610 Agriculture	<input type="checkbox"/> 422 Appeal 28 USC 158	<input type="checkbox"/> 400 State Reapportionment
<input type="checkbox"/> 120 Marine	<input type="checkbox"/> 310 Airplane	<input type="checkbox"/> 362 Personal Injury - Med. Malpractice	<input type="checkbox"/> 620 Other Food & Drug	<input type="checkbox"/> 423 Withdrawal 28 USC 157	<input type="checkbox"/> 410 Antitrust
<input type="checkbox"/> 130 Miller Act	<input type="checkbox"/> 315 Airplane Product Liability	<input type="checkbox"/> 365 Personal Injury - Product Liability	<input type="checkbox"/> 625 Drug Related Seizure of Property 21 USC 881	<b>PROPERTY RIGHTS</b>	<input type="checkbox"/> 430 Banks and Banking
<input type="checkbox"/> 140 Negotiable Instrument	<input type="checkbox"/> 320 Assault, Libel & Slander	<input type="checkbox"/> 368 Asbestos Personal Injury Product Liability	<input type="checkbox"/> 630 Liquor Laws	<input type="checkbox"/> 820 Copyrights	<input type="checkbox"/> 450 Commerce
<input type="checkbox"/> 150 Recovery of Overpayment & Enforcement of Judgment	<input type="checkbox"/> 330 Federal Employers' Liability	<b>PERSONAL PROPERTY</b>	<input type="checkbox"/> 640 R.R. & Truck	<input type="checkbox"/> 830 Patent	<input type="checkbox"/> 460 Deportation
<input type="checkbox"/> 151 Medicare Act	<input type="checkbox"/> 340 Marine	<input type="checkbox"/> 370 Other Fraud	<input type="checkbox"/> 650 Airline Regs.	<input type="checkbox"/> 840 Trademark	<input type="checkbox"/> 470 Racketeer Influenced and Corrupt Organizations
<input type="checkbox"/> 152 Recovery of Defaulted Student Loans (Excl. Veterans)	<input type="checkbox"/> 345 Marine Product Liability	<input type="checkbox"/> 371 Truth in Lending	<input type="checkbox"/> 660 Occupational Safety/Health	<b>SOCIAL SECURITY</b>	<input type="checkbox"/> 480 Consumer Credit
<input type="checkbox"/> 153 Recovery of Overpayment of Veteran's Benefits	<input type="checkbox"/> 350 Motor Vehicle	<input type="checkbox"/> 380 Other Personal Property Damage	<input type="checkbox"/> 690 Other	<input type="checkbox"/> 861 HIA (1395ff)	<input type="checkbox"/> 490 Cable/Sat TV
<input type="checkbox"/> 160 Stockholders' Suits	<input type="checkbox"/> 355 Motor Vehicle Product Liability	<input type="checkbox"/> 385 Property Damage Product Liability	<b>LABOR</b>	<input type="checkbox"/> 862 Black Lung (923)	<input type="checkbox"/> 810 Selective Service
<input type="checkbox"/> 190 Other Contract	<input type="checkbox"/> 360 Other Personal Injury	<b>PRISONER PETITIONS</b>	<input type="checkbox"/> 710 Fair Labor Standards Act	<input type="checkbox"/> 863 DIWC/DIWW (405(g))	<input type="checkbox"/> 850 Securities/Commodities/Exchange
<input type="checkbox"/> 195 Contract Product Liability		<input type="checkbox"/> 510 Motions to Vacate Sentence	<input type="checkbox"/> 720 Labor/Mgmt. Relations & Disclosure Act	<input type="checkbox"/> 864 SSID Title XVI	<input type="checkbox"/> 875 Customer Challenge 12 USC 3410
<input type="checkbox"/> 196 Franchise	<b>CIVIL RIGHTS</b>	<input type="checkbox"/> 530 General	<input type="checkbox"/> 730 Labor/Mgmt. Reporting & Disclosure Act	<input type="checkbox"/> 865 RSI (405(g))	<input type="checkbox"/> 890 Other Statutory Actions
<b>REAL PROPERTY</b>	<input type="checkbox"/> 441 Voting	<input type="checkbox"/> 535 Death Penalty	<input type="checkbox"/> 740 Railway Labor Act	<b>FEDERAL TAX SUITS</b>	<input type="checkbox"/> 891 Agricultural Acts
<input type="checkbox"/> 210 Land Condemnation	<input checked="" type="checkbox"/> 442 Employment	<input type="checkbox"/> 540 Mandamus & Other	<input type="checkbox"/> 790 Other Labor Litigation	<input type="checkbox"/> 870 Taxes (U.S. Plaintiff or Defendant)	<input type="checkbox"/> 892 Economic Stabilization Act
<input type="checkbox"/> 220 Foreclosure	<input type="checkbox"/> 443 Housing/Accommodations	<input type="checkbox"/> 555 Prison Condition	<input type="checkbox"/> 791 Empl. Ret. Inc. Security Act	<input type="checkbox"/> 871 IRS—Third Party 26 USC 7609	<input type="checkbox"/> 893 Environmental Matters
<input type="checkbox"/> 230 Rent Lease & Ejectment	<input type="checkbox"/> 444 Welfare		<b>IMMIGRATION</b>		<input type="checkbox"/> 894 Energy Allocation Act
<input type="checkbox"/> 240 Torts to Land	<input type="checkbox"/> 445 Amer. w/Disabilities - Employment		<input type="checkbox"/> 462 Naturalization Application		<input type="checkbox"/> 895 Freedom of Information Act
<input type="checkbox"/> 245 Tort Product Liability	<input type="checkbox"/> 446 Amer. w/Disabilities - Other		<input type="checkbox"/> 463 Habeas Corpus - Alien Detainee		<input type="checkbox"/> 900 Appeal of Fee Determination Under Equal Access to Justice
<input type="checkbox"/> 290 All Other Real Property	<input type="checkbox"/> 440 Other Civil Rights		<input type="checkbox"/> 465 Other Immigration Actions		<input type="checkbox"/> 950 Constitutionality of State Statutes

## V. ORIGIN

(Place an "X" in One Box Only)

- ☒ 1 Original Proceeding ☐ 2 Removed from State Court ☐ 3 Remanded from Appellate Court ☐ 4 Reinstated or Reopened ☐ 5 Transferred from another district (specify) ☐ 6 Multidistrict Litigation ☐ 7 Appeal to District Judge from Magistrate Judgment

## VI. CAUSE OF ACTION

Cite the U.S. Civil Statute under which you are filing (Do not cite jurisdictional statutes unless diversity):  
**Fair Housing and Employment Act, Section 1983, 1985, 1986**  
 Brief description of cause:  
**Discrimination & Harassment (resulting in unlawful discharge)**

## VII. REQUESTED IN COMPLAINT:

☐ CHECK IF THIS IS A CLASS ACTION UNDER F.R.C.P. 23 **DEMAND \$**

CHECK YES only if demanded in complaint:

## VIII. RELATED CASE(S) IF ANY

PLEASE REFER TO CIVIL L.R. 3-12 CONCERNING REQUIREMENT TO FILE "NOTICE OF RELATED CASE".

JURY DEMAND: ☒ Yes ☐ No

## IX. DIVISIONAL ASSIGNMENT (CIVIL L.R. 3-2) (PLACE AND "X" IN ONE BOX ONLY)

☐ SAN FRANCISCO/OAKLAND☒ SAN JOSE

DATE

SIGNATURE OF ATTORNEY OF RECORD

03-04-08

## INSTRUCTIONS FOR ATTORNEYS COMPLETING CIVIL COVER SHEET FORM JS 44

## Authority For Civil Cover Sheet

The JS 44 civil cover sheet and the information contained herein neither replaces nor supplements the filings and service of pleading or other papers as required by law, except as provided by local rules of court. This form, approved by the Judicial Conference of the United States in September 1974, is required for the use of the Clerk of Court for the purpose of initiating the civil docket sheet. Consequently, a civil cover sheet is submitted to the Clerk of Court for each civil complaint filed. The attorney filing a case should complete the form as follows:

**I. (a) Plaintiffs-Defendants.** Enter names (last, first, middle initial) of plaintiff and defendant. If the plaintiff or defendant is a government agency, use only the full name or standard abbreviations. If the plaintiff or defendant is an official within a government agency, identify first the agency and then the official, giving both name and title.

(b) County of Residence. For each civil case filed, except U.S. plaintiff cases, enter the name of the county where the first listed plaintiff resides at the time of filing. In U.S. plaintiff cases, enter the name of the county in which the first listed defendant resides at the time of filing. (NOTE: In land condemnation cases, the county of residence of the "defendant" is the location of the tract of land involved.)

(c) Attorneys. Enter the firm name, address, telephone number, and attorney of record. If there are several attorneys, list them on an attachment, noting in this section "(see attachment)".

**II. Jurisdiction.** The basis of jurisdiction is set forth under Rule 8(a), F.R.C.P., which requires that jurisdictions be shown in pleadings. Place an "X" in one of the boxes. If there is more than one basis of jurisdiction, precedence is given in the order shown below.

United States plaintiff. (1) Jurisdiction based on 28 U.S.C. 1345 and 1348. Suits by agencies and officers of the United States are included here.

United States defendant. (2) When the plaintiff is suing the United States, its officers or agencies, place an "X" in this box.

Federal question. (3) This refers to suits under 28 U.S.C. 1331, where jurisdiction arises under the Constitution of the United States, an amendment to the Constitution, an act of Congress or a treaty of the United States. In cases where the U.S. is a party, the U.S. plaintiff or defendant code takes precedence, and box 1 or 2 should be marked.

Diversity of citizenship. (4) This refers to suits under 28 U.S.C. 1332, where parties are citizens of different states. When Box 4 is checked, the citizenship of the different parties must be checked. (See Section III below; federal question actions take precedence over diversity cases.)

**III. Residence (citizenship) of Principal Parties.** This section of the JS 44 is to be completed if diversity of citizenship was indicated above. Mark this section for each principal party.

**IV. Nature of Suit.** Place an "X" in the appropriate box. If the nature of suit cannot be determined, be sure the cause of action, in Section VI below, is sufficient to enable the deputy clerk or the statistical clerks in the Administrative Office to determine the nature of suit. If the cause fits more than one nature of suit, select the most definitive.

**V. Origin.** Place an "X" in one of the seven boxes.

Original Proceedings. (1) Cases which originate in the United States district courts.

Removed from State Court. (2) Proceedings initiated in state courts may be removed to the district courts under Title 28 U.S.C., Section 1441. When the petition for removal is granted, check this box.

Remanded from Appellate Court. (3) Check this box for cases remanded to the district court for further action. Use the date of remand as the filing date.

Reinstated or Reopened. (4) Check this box for cases reinstated or reopened in the district court. Use the reopening date as the filing date.

Transferred from Another District. (5) For cases transferred under Title 28 U.S.C. Section 1404(a). Do not use this for within district transfers or multidistrict litigation transfers.

Multidistrict Litigation. (6) Check this box when a multidistrict case is transferred into the district under authority of Title 28 U.S.C. Section 1407. When this box is checked, do not check (5) above.

Appeal to District Judge from Magistrate Judgment. (7) Check this box for an appeal from a magistrate judge's decision.

**VI. Cause of Action.** Report the civil statute directly related to the cause of action and give a brief description of the cause. **Do not cite jurisdictional statutes unless diversity.** Example: U.S. Civil Statute: 47 USC 553

Brief Description: Unauthorized reception of cable service

**VII. Requested in Complaint.** Class Action. Place an "X" in this box if you are filing a class action under Rule 23, F.R.Cv.P.

Demand. In this space enter the dollar amount (in thousands of dollars) being demanded or indicate other demand such as a preliminary injunction.

Jury Demand. Check the appropriate box to indicate whether or not a jury is being demanded.

**VIII. Related Cases.** This section of the JS 44 is used to reference related pending cases if any. If there are related pending cases, insert the docket numbers and the corresponding judge names for such cases.

**Date and Attorney Signature.** Date and sign the civil cover sheet.